

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

7 Rolls Building  
Fetter Lane  
London EC4A 1L

Date:

**Before:**

**Mr Nicholas Thompsell**  
**(sitting as a Deputy Judge of the High Court)**

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**Between**

**INVESTOHILLS VESTA**

**Applicant**

**- and -**

- (1) **PETERGROW LIMITED**  
(2) **GATEBORG SOLUTIONS LIMITED**  
(3) **BROCKETT SERVICES LIMITED**  
(4) **RONDE HOLDING LIMITED**  
(5) **MR TARAS BARSHCHOVSKYY**  
(Ukraine tax ID No. 2625310006)  
(6) **FRANCOSO CORPORATION LIMITED**  
(Cyprus Reg. No. HE 274666)  
(7) **MR ANDRIY SHPUK**  
(Ukraine tax ID No. 3057705131)  
(8) **MR ANDRIAN ARTSYSHEVSKYY**  
(Ukraine tax ID No. 2914808953)  
(9) **MR ZINOVII ZAKOPETS**  
(Ukraine tax ID No. 3168305335)  
(10) **MR ROMAN PALIY**  
(Ukraine tax ID No. 30700011972)  
(11) **MR IHOR KULAK**  
(Ukraine tax ID No. 2675311212)  
(12) **MR SVIATOSLAV BARSHCHOVSKYY**  
(Ukraine tax ID No. 3597803217)  
(13) **MRS SVITLANA STEPANIVNA BARSHCHOVSKA**  
(Ukraine tax ID No. 2625310006)  
(14) **TB SAD LLC**  
(Ukraine Reg. No. 37122702)  
(15) **BERG FRUIT LLC**  
(Ukraine Reg. No. 43435264)  
(16) **AVANTIKA CONSULTING LIMITED**  
(Cyprus Reg. No. HE 347631)  
  
(17) **T.B. FRUIT POLSKA SP.Z.O.O.**  
(Poland Reg. No. KRS 0000318476)  
(18) **T.B. FRUIT POLSKA SP.Z.O.O. S.K.A.**  
(Poland Reg. No. KRS 0000424136)

**Respondents**

- (19) **T.B. FRUIT DWIKOZY SP.Z.O.O.**  
(Poland Reg. No. KRS 0000086489)
- (20) **YABLUNEVIY DAR LLC**  
(Ukraine Reg. No. 32475074)
- (21) **TANK TRANS LLC**  
(Ukraine Reg. No. 32115067)
- (22) **ODEO LLC**  
(Ukraine Reg. No. 39192457)
- (23) **AGROBIZNESRESURS LLC**  
(Ukraine Reg. No. 38966106)
- (24) [A previous Twenty-Fourth Respondent is  
no longer joined to these proceedings]
- (25) **GALICIA TRADE LLC**  
(Ukraine Reg. No. 38169055)
- (26) **INTERDRAFT LLC**  
(Ukraine Reg. No. 32568776)
- (27) **TB FRUIT CAPITAL LLC**  
(Ukraine Reg. No. 39878629)
- (28) **MR ZAMOHYLYNYI VALERII IVANOVYCH**  
(Ukraine tax ID No. 2567016796)
- (29) **T.B. FRUIT S.R.L.**  
(Moldova Reg. No. IDNO 1013600028762)

**MR. JAMES RAMSDEN QC, MR. ROBERT JAMES DOUGANS and MR. PHILIPPE  
KUHN** (instructed by **Preiskel & Co. LLP**) for the **Applicant**

**MR. LOUIS FLANNERY QC** (of **Mishcon de Reya**) for the **Sixth, Eighth and Sixteenth  
Respondents.**

**The First to Fifth, Seventh, Ninth to Fifteenth and Seventeenth to Twenty-Ninth  
Respondents and were not represented.**

Decision made on 21 January 2021 on the basis of paper submissions

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**APPROVED JUDGMENT**

**Mr Nicholas Thompsell:**

1. By means of an Application Notice dated 14 January 2021, Investohills Vesta LLC (the "**Applicant**") has requested the Court to make a further Order in relation to the Worldwide Freezing Order dated 1 December 2020 (the "**WFO**") which I considered at a continuation hearing on 21 December 2020 and in respect of which I made a further Order (the "**Further Order**").
2. One of the matters under consideration at that hearing, was the Applicant's requirement that the Respondents who were represented by Mishcon de Reya LLP should be required to confirm in the form of a sworn affidavit the disclosures that they had been ordered to make under the WFO. Given the practicalities of dealing with restrictions on movement arising from the current pandemic, it was hoped that this could be undertaken remotely by means of a video link so that the relevant Respondents in the Ukraine and Cyprus could appear in front of a Commissioner for Oaths in the United Kingdom without having to travel. As there was uncertainty as to the practical means for obtaining a sworn affidavit, the Further Order provided that, if the Applicant and the relevant Respondents were unable to agree on the lawfulness of this approach, they should have liberty to apply for further directions on paper with the matter being reserved to me.
3. Since the Further Order was made there has been correspondence between the lawyers for the Applicant and the lawyers for these Respondents, but they have been unable to resolve this point. As a result this application has been made.

4. The Applicant now seeks a further order that the Sixth, Eighth and Sixteenth Respondents be required to provide the disclosure required by paragraph 10 of the WFO in the form of an affidavit sworn by "*any permitted method (for the avoidance of doubt, including under local law or practice in Ukraine or Cyprus) by 4 PM on 29 January 2021*".
5. In support of this application, I have been provided with the First Witness Statement of Mr Robert James Dougans and written submissions from counsel for the Applicant.
6. On behalf of the Respondents in question, I have received submissions in writing from Mr Louis Flannery QC of Mishcon de Reya LLP, supported by the Witness Statement of Heidrun Elisabeth Walsh (also of that firm) dated 20 January 2021.
7. The following issues arise.

**A. Is an affidavit necessary?**

8. The WFO contains the usual provisions for the Respondents to provide information about the assets they are holding that are subject to it. Following the usual form, this requires an initial disclosure to be followed up by an affidavit.
9. Whilst there is a requirement written into Practice Direction 25A for the evidence supporting an application for a freezing injunction to be supported by affidavit evidence, there is no specific requirement written into the Practice Direction for the respondent, where it is required by the order to provide information, to confirm that information by affidavit. However the

requirement for the information to be backed up by affidavit is included in the example of the freezing injunction which is appended to the Practice Direction. I note, however, that this is offered as an "example" and may be modified as appropriate in any particular case (PD 20 5A, paras 6.1 and 6.2).

10. The position is, therefore, that the WFO does at present order an affidavit to be provided, but it would have been possible for it not to have done so had the Court ordered otherwise.
11. Of course, there are good reasons why the example form of freezing injunction contains provision for an affidavit. The requirement to swear an affidavit is intended to impress on respondents the seriousness of what they are doing, and has the effect of causing any deliberate untruthfulness in the document to be subject to sanctions for perjury, as well as for contempt of court. Wherever possible, therefore, the requirement for an affidavit is one that the Court should be expected to order.

**B. Is it practical to provide an affidavit in this case?**

12. Various arguments have been put to the Court as to whether or not it is practical for the Respondents in this case to swear an affidavit, given the current restrictions on movement imposed as a result of the current pandemic.
13. In particular, it has been drawn to the Court's attention that the Sixth and Sixteenth Respondents, which are in Cyprus, are subject to lockdown measures such that the swearing of affidavits is permitted only in exceptionally urgent cases and on application to the Registrar. In relation to the Eighth Respondent, I am told, and accept, that he is in Lviv and that it

would be difficult, in particular for him to travel any distance within the Ukraine.

14. However, it is argued on behalf of the Applicant it would nevertheless be possible for the Respondents to swear an affidavit for two reasons:

*(i) Because of the possibility of remote swearing*

15. It is argued that there is no reason why an oath could not be sworn remotely by the Respondents in the Ukraine or in Cyprus appearing by means of a video link in front of a Commissioner for Oaths in the United Kingdom and that this is not incompatible with the Commissioners for Oaths Act 1889 (the “Act”). The Act (unsurprisingly, given its date) does not deal with the possibility of a remote video link and therefore neither provides for this nor rules it out.

16. The relevant provisions of the Act are brief:

17. Section 1(2) provides “*A commissioner for oaths may, ..., in England or elsewhere, administer any oath or take any affidavit for the purposes of any court or matter in England*”.

18. Section 3(1) provides “*Any oath or affidavit required for the purpose of any court or matter in England ... may be taken or made in any place out of England before any person having authority to administer an oath in that place*”.

19. Section 5 provides “*Every commissioner before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made*”.

20. The Applicant argues that these provisions contain no prohibition on appearing by video link and that they should allow a deponent to appear "before" the relevant commissioner for oaths or equivalent by such remote means.
21. There appears to be scant authority on the interpretation of these provisions as regards this point. My attention has been drawn to a decision of Nugee J in *Haederle v Thomas* [2016] EWHC B36 (Ch), who described the "essential nature" of an affidavit in the following terms:
- "What, then, is the essential nature of an affidavit? It does seem to me that the essential nature of an affidavit is that it is evidence which is not only given by a deponent but which the deponent has not only stated to be true but has sworn to be true. That, indeed, is, no doubt, the origin of the word "affidavit" which, coming from a Latin expression which incorporates the idea of an oath, refers to swearing that the statement is true. The practice on taking an oath in respect of an affidavit is that the deponent has to appear in person before a Commissioner for Oaths and swear on the Bible or other holy book in front of the Commissioner for Oaths that the affidavit is true."*
22. On behalf of the Respondents it has been suggested that the expressions "appear in person before" and "in front of" imply a physical presence.
23. However, I do not think that this case really offers any help. Nugee J was not in that case considering the question of appearing by means of a video link, but rather the question of whether a sworn but unsigned document could comprise an affidavit. At most these remarks are obiter dicta and certainly they should not be interpreted as if they were the words of a statute. Even if

they were to be interpreted in that way it is arguable that the phrases "*appear in person*" and "*in front of*" could be satisfied by a remote appearance.

24. I consider, therefore, it may well be open to me to decide that the Act could be interpreted to allow a Commissioner for Oaths to allow someone swearing an oath before him or her to do so via a remote video link. It is difficult to see a policy reason against this, at a time when witnesses routinely are providing evidence in court on oath by video link. In many ways this would be a very positive move and could be of a great boon, given the difficulties that so many are having in the light of the movement restrictions caused by the current pandemic.
25. However I am extremely reluctant to rule on this point under the circumstances of these interlocutory procedures where the arguments have not been tested by a full exchange in court and given the large implications that this would have across a whole range of different practice areas. I am mindful that there has been a great deal of attention recently to procedures to allow remote working, but none of the various Practice Directions dealing with the approach of trying to provide justice in the face of the current pandemic have allowed this as a possibility. It is likely also that in many contexts procedural rules have been written on the assumption that someone swearing an oath will be in the physical presence of the Commissioner for Oaths, and that it may create uncertainty if these are not considered in detail.
26. I will, therefore, content myself with noting that I believe a strong argument can be made for the proposition that this may be possible without any amendment to the Act and that I hope that this does become recognised as



possible either as a result of a further Practice Direction or through a court ruling that is made in more considered circumstances.

*(ii) Because of the possibility of using local administrators of oaths*

27. As noted, section 3(1) of the Act provides that “*Any oath or affidavit required for the purpose of any court or matter in England ... may be taken or made in any place out of England before any person having authority to administer an oath in that place*”.
28. I take this to mean that outside England anyone who is authorised for the purposes of local law to administer an oath will be accepted as someone before whom an affidavit may be sworn that can be used for the purpose of English proceedings.
29. To know whether this extends the practicality of swearing an oath in Cyprus or the Ukraine would depend on obtaining local advice. The only up-to-date evidence that is before the Court at present as regards these jurisdictions is that in Ms Walsh's Witness Statement.
30. Her evidence is that she has received local advice that, notwithstanding the Applicant's experience in December of finding a means for an oath to be sworn in Cyprus, the swearing of affidavits is currently permitted in Cyprus only in exceptionally urgent cases and on application to the Registrar. In the absence of any evidence to the contrary, I must accept that it would be extremely difficult to swear an affidavit in Cyprus at present.
31. Ms Walsh further gives evidence that that she has been advised that the only facility for swearing an affidavit in the Ukraine is by attending the British

Embassy in Kiev, which is currently closed. Ideally I would have liked the ability to question this evidence, since it is possible that it may be based on a misapprehension that what is needed is a person who is accredited under English law to administer oaths, rather than a person who is accredited under local law to administer oaths. However, as I am also told that the concept of an affidavit as it is known in England is not known in Ukrainian civil proceedings, this may not be the case. Certainly, at present I am in no position to conclude that it would be possible or easy for the Eighth Respondent to find someone in the Ukraine, within a reasonable distance of where he is in Lviv having regard to the current pandemic restrictions applicable in Ukraine.

32. On the balance of the evidence before me, I must conclude that to comply with the requirement to provide an affidavit would be very difficult for each of these Respondents.
33. I should then balance this difficulty against the prejudice to the Applicant in not obtaining the benefit of confirmation by affidavit of the information already provided by means of a witness statement.

**C. What is the prejudice to the Applicant of no affidavit being provided?**

34. As noted above, there are benefits to requiring an affidavit rather than a witness statement. The formality required by an affidavit will impress on respondents the seriousness of what they are doing, and has the effect of causing any deliberate untruthfulness in the document to be subject to sanctions for perjury, as well as for contempt of court.

35. However, in the current circumstances these benefits may be thought not to be of any major importance when weighed against the difficulties of compliance. Each of the three witness statements served and filed so far contains a Statement of Truth (in a form compliant with CPR Part 22, which deals with Statements of Truth). As a result, if there were anything in them that was knowingly untrue, contempt proceedings could be brought against the persons making those statements. As the penalties for contempt are in practice similar to those applied in relation to perjury, it may be considered that these alone should be sufficient to concentrate the mind of those making the statements.
36. In these circumstances, I consider that it would not be proportionate or desirable in the interests of justice to require these Respondents to provide an affidavit within the timeframe provided in the Order.
37. Accordingly, I will refuse this Application and not make the Order requested at this time. However, as my reasons are based on the current lockdown circumstances, I give leave for the Applicant to reapply for an order to receive an affidavit at a future date if and when evidence can be adduced that the Respondents in question are able to access a means of swearing oaths that is not unduly onerous having regard to then current travel restrictions and other circumstances relating to the pandemic.

#### **D. Costs**

38. In considering the position as regards costs, I am mindful of the reasonable approach that was taken on behalf of the Applicant in correspondence in offering two alternatives to its preferred position that it would obtain affidavits.

39. One alternative was that the Respondents would agree not to rely on the absence of a sworn affidavit as a ground for resisting proceedings seeking committal for contempt of court for any material non-disclosure or perjured evidence within the scope of the WFO. The Respondents did not take this offer seriously and cannot be said to have engaged with it.
40. In a sense, the result of this Application has been to get to a similar position to that argued for under this first alternative, in that one of the major reasons why I have decided not to grant the Order is in reliance of the argument put forward on behalf of the relevant Respondents that their witness statements will expose them under CPR Part 81 (in particular under CPR 81.3(5)(b)) to an application for contempt if they knowingly make a false statement in a witness statement supported by a statement of truth. Having used this argument to fend off this Application, the Respondents will scarcely be in a position to argue against this proposition should the question of an application for committal for contempt arise. Neither will they be able to argue that they were not aware of the consequences of making a false statement.
41. The other alternative was to offer more time to obtain the affidavits. As it turns out the extra time offered, until 29 January 2021, has to a large extent been used up in these negotiations and is the same that is now proposed in the draft Order requested. Nevertheless, the idea of being given more time is not one that was engaged with at all by the Respondents in the correspondence, even though this would have had the result of curing what is still technically a breach by their clients in meeting the unamended requirements of the WFO.

42. I am also mindful that I have not found against the position put forward by the Applicants in relation to their main contention that it would be possible (and if possible, I accept it would be proportionate) to swear an oath by means of a remote video link. Instead, I have declined to rule on that point for the reasons explained above.
  
43. Given these considerations, I do not think it is appropriate that I make any order for costs.